

## Legal Risks Facing New Media Publishers

The rise of online media means that many businesses are doubling as publishers, with all the attendant benefits and risks. Every day, courts and lawmakers face the challenge of applying legal principles conceived in the era of periodic publications featuring bylines and mastheads to the unlimited, instantaneous, and often anonymous content communicated via the Internet.

Below are brief synopses of some of the issues facing online publishers that courts have discussed in recent months.

### Anonymous Defamation

Federal law generally precludes defamation liability for websites based on third-party content. This, however, does not mean that third-party content cannot land a webmaster in court. Plaintiffs often issue subpoenas to websites for identifying information regarding anonymous commenters. While companies [may be reluctant](#) to spend their money protecting someone else's First Amendment right to speak anonymously, website operators -- particularly those that have promised to protect users' privacy -- may face liability for turning over identifying information.

Businesses that have themselves been anonymously defamed and seek to identify the defamer must jump through a number of procedural hurdles designed to protect the commenter's constitutional right to speak anonymously. [Some courts have suggested](#) that these hurdles may be easier to clear when the anonymous defamer acted for commercial purposes.

### Jurisdiction

Internet postings can be accessed anywhere and courts have suggested that Internet posters can therefore be sued anywhere. A federal appellate court sitting in Chicago [recently rejected](#) the Arizona domain registrar GoDaddy's argument that, absent specific intent to direct its Internet activities toward Illinois, Illinois courts should not hear a cybersquatting suit against it.

Additionally, at least [three recent](#) appellate courts have held that online defamers can be sued in states other than the one from which the content was published. This means that companies with online presences must be prepared to defend themselves in jurisdictions that may apply varying legal standards. Savvy plaintiffs are sure to choose the jurisdiction most favorable to them.

### Privacy and Confidentiality

Many social media users assume that by setting posts to "private" they control their audience. This is not always the case. A New York court [recently held](#) that "private" Facebook and MySpace posts are discoverable during litigation and that there is "no legitimate reasonable expectation of privacy" in such posts. Additionally, the United States [Supreme Court decided](#) this year that an officer's privacy rights were not violated when the police department searched his text messages while auditing the department's texting plan. But some courts have found privacy violations where employers used false pretenses to access employees' "private" content.

In another recent case a [federal court decided](#) that a company's client list could not be protected as a trade secret because the same information could easily be found on sites such as LinkedIn.

### Intellectual Property

While website operators [can limit](#) their copyright liability for third-party content by following statutory procedures, websites' own content is fair game. Online publishers, particularly bloggers, often quote and expand on content created by others. While some perceive this as an opportunity to reach new audiences, others denounce the practice as free-riding. Some media outlets have [sold their copyrights](#) to companies that have filed hundreds of suits against alleged online infringers. Others have threatened to sue bloggers for [misappropriation of "hot news."](#)

Courts have suggested that those who misuse an entity or individual's name to bring attention to online gripes, for instance by impersonating their target, [may be liable](#) under trademark statutes, particularly when acting with a profit motive. California has [banned](#) "e-personation" outright.

### Harassment

A federal court [dismissed](#) an employee's suit alleging that her employer subjected her to a "hostile work environment" by failing to act after coworkers posted inappropriate comments regarding her race on a personal Facebook page. The court left open the question of whether a company can be liable for improper comments on a company-monitored social media site.

Excerpted from FVLD's blog, <http://www.postorperish.com>, which regularly discusses these and other issues facing online publishers.

#### About the Author



[Neil M. Rosenbaum](#)

Neil grew up in West Bloomfield, Michigan and joined FVLD upon graduation from law school. Since joining the firm, Neil has rapidly gained experience in most phases of commercial litigation covering a wide variety of matters at the civil and appellate levels. Neil has worked on litigation teams representing clients in various complex matters including class action and antitrust disputes, fraud and conspiracy claims, and high-profile defamation and First Amendment claims. Neil has also litigated numerous shareholder disputes, as well as products liability actions,...

[nrosenbaum@fvldlaw.com](mailto:nrosenbaum@fvldlaw.com)

312-701-6824

[www.fvldlaw.com](http://www.fvldlaw.com)

#### About the Author



**[Seth A. Stern](#)**

Seth grew up in the Chicago and Miami areas. He joined FVLD upon graduating, *magna cum-laude* and Order of the Coif, from the DePaul University College of Law in 2009. During law school, Seth was a Summer Associate at FVLD for two summers and a part-time law clerk at the Firm during the school years. Seth has worked on numerous defamation and First Amendment, employment, and commercial litigation matters. Seth recently successfully argued against a motion filed by accused wife-murderer Drew Peterson seeking to close pretrial hearings to the press and...

[sstern@fvldlaw.com](mailto:sstern@fvldlaw.com)

312-701-6837

[www.fvldlaw.com](http://www.fvldlaw.com)

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[sstern@fvldlaw.com](mailto:sstern@fvldlaw.com)

312-701-6837

[www.fvldlaw.com](http://www.fvldlaw.com)

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